IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 530 of 2000.

Date of Decision: 20-9-2007.

State of H.P. Appellant.

Versus

Gulam Deen & Ors. Respondents.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No.

For the appellant : Sh.V K Verma, Additional Advocate General.

For respondent : Shri Surinder Saklani, Advocate, vice Shri Ajay Sharma, Advocate.

Surinder Singh, J . (oral)

The judgment of acquittal has been assailed in this appeal.

The brief facts are that on 20-1-1996 at about 8.00 P.M. , Head Constable Akshay Kumar found the truck bearing registration number HP-36-1125 loaded with khair fire wood near H.P. S.E.B. Sub Station Bhera while he was on patrol duty in Government jeep and in connection with investigation of case FIR No. 13/96. The truck driver produced the permit of the timber which was valid at that time but it is alleged that it was being transported between the sun-set and before the sun rise. The documents and the case property were taken into possession. Ruka Exhibit PW4/A was sent to Police Station for registration of the case on the basis of which formal FIR Exhibit PW4/B was registered. On weighment, 48.70 qtls of fire wood was found in excess than permitted which was taken into possession. The police recorded the statements of the witnesses and presented the challan for trial under Section 41 and 42 of the Indian

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Whether reporters of the Local papers are allowed to see the judgment? Yes.

Forest Act and Section 181 of the Motor Vehicles Act. The respondent denied the charges and claimed trial.

The prosecution examined four witnesses. The respondent was also examined under Section 313 of the Code of Criminal Procedure. On appreciation of evidence on record, the learned trial Court acquitted the respondent against which the instant appeal has been filed on the ground that the learned trial Court did not appreciate the evidence of the prosecution in the right manner and set the unrealistic standard to appreciate the prosecution evidence.

I heard Shri V.K. Verma, learned Additional Advocate General and Shri Surinder Saklani, Advocate and have carefully gone through the evidence on record.

The truck was allegedly found transporting the fire wood after the sun-set and before the sun-rise which was being driven by the respondent No.1. According to PW1, the Police Party was busy in the investigation of some other case and intercepted the aforesaid truck wherein, besides the Driver, two other persons were sitting and it was loaded with the fire wood. According to him, the truck was chased for one and half km from Bhera onwards and thereafter, they were able to stop and check it . This story has not been set forth in the ruka Exhibit PW4/A which is the earliest version, on the basis of which FIR Exhibit PW4/B was registered.

PW2 Shri Braham Dass has not supported the case of the prosecution. However, in the cross-examination, he had admitted that the truck was not weighed in his presence at any time. Though the prosecution has relied upon the weighment receipt Exhibit PC but it bears the date 23-1-1996 and it has shown 187 qtls of weight but it does not bear the details of the truck. The weightment clerk has also not been examined. PW3 LHC Des Raj has stated that on having been asked, the respondent had shown the permission issued by the Forest Department

and the truck was to be unloaded at Mehatpur where there was a head office of the Forest Department and the Police. The time to proceed to the spot also varies to a great extent. According to Akshay Kumar (PW4), he had started from the Police Station around 5.30 P.M to the spot which is at a distance of only 17 km. In that case they should have been there positively by 6.00 P.M. PW1 has stated in the cross-examination that they had started from Amb at 2/3.00 P.M., then the arrival time at the spot should have been latest by 3.30 P.M. or in any case before 5.00 P.M. i.e. before sun-set. PW3 LHC Des Raj has stated that they started from Amb at 6.00 or 6.30 P.M. Then the arrival on the spot should have been by 7.00 P.M. Thus, this statement regarding starting from the Police Station is contradictory. In the light of these contradictions, the explanation given by the respondent that his truck was intercepted before the sun-set by the police cannot be dis-believed. The prosecution has not placed and proved on the record the Roznamcha entries regarding the departure of the police party to the spot, which would have thrown light on the prosecution case. On the strength of the aforesaid evidence that the respondent was transporting excess timber than permitted after the sun set, is not proved in accordance with law.

Thus on careful scrutiny of the impugned judgment of acquittal, I have found that the learned trial Court has taken note of every bit of evidence put forth to prove the case and dis-believed the prosecution case because of the above contradictions and improvements which are born out from the record. For the reasons aforesaid, I do not agree with the contentions raised by the learned Additional Advocate General that the learned trial Court has decided the matter in a cursory manner without appreciating the evidence of the prosecution in the right perspective. Accordingly, the judgment of the trial court is upheld and the appeal is

dismissed. The respondents are discharged of their bail bonds entered at any stage during the trial of this case.

(Surinder Singh)
Judge.

September 20, 2007.
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